

### **31A-2-308 Enforcement penalties and procedures.**

- (1)
  - (a) A person who violates any insurance statute or rule or any order issued under Subsection 31A-2-201(4) shall forfeit to the state twice the amount of any profit gained from the violation, in addition to any other forfeiture or penalty imposed.
  - (b)
    - (i) The commissioner may order an individual producer, surplus line producer, limited line producer, managing general agent, reinsurance intermediary, adjuster, or insurance consultant who violates an insurance statute or rule to forfeit to the state not more than \$2,500 for each violation.
    - (ii) The commissioner may order any other person who violates an insurance statute or rule to forfeit to the state not more than \$5,000 for each violation.
  - (c)
    - (i) The commissioner may order an individual producer, surplus line producer, limited line producer, managing general agent, reinsurance intermediary, adjuster, or insurance consultant who violates an order issued under Subsection 31A-2-201(4) to forfeit to the state not more than \$2,500 for each violation. Each day the violation continues is a separate violation.
    - (ii) The commissioner may order any other person who violates an order issued under Subsection 31A-2-201(4) to forfeit to the state not more than \$5,000 for each violation. Each day the violation continues is a separate violation.
  - (d) The commissioner may accept or compromise any forfeiture under this Subsection (1) until after a complaint is filed under Subsection (2). After the filing of the complaint, only the attorney general may compromise the forfeiture.
- (2) When a person fails to comply with an order issued under Subsection 31A-2-201(4), including a forfeiture order, the commissioner may file an action in any court of competent jurisdiction or obtain a court order or judgment:
  - (a) enforcing the commissioner's order;
  - (b)
    - (i) directing compliance with the commissioner's order and restraining further violation of the order; and
    - (ii) subjecting the person ordered to the procedures and sanctions available to the court for punishing contempt if the failure to comply continues; or
  - (c) imposing a forfeiture in an amount the court considers just, up to \$10,000 for each day the failure to comply continues after the filing of the complaint until judgment is rendered.
- (3)
  - (a) The Utah Rules of Civil Procedure govern actions brought under Subsection (2), except that the commissioner may file a complaint seeking a court-ordered forfeiture under Subsection (2)(c) no sooner than two weeks after giving written notice of the commissioner's intention to proceed under Subsection (2)(c).
  - (b) The commissioner's order issued under Subsection 31A-2-201(4) may contain a notice of intention to seek a court-ordered forfeiture if the commissioner's order is disobeyed.
- (4) If, after a court order is issued under Subsection (2), the person fails to comply with the commissioner's order or judgment:
  - (a) the commissioner may certify the fact of the failure to the court by affidavit; and
  - (b) the court may, after a hearing following at least five days written notice to the parties subject to the order or judgment, amend the order or judgment to add the forfeiture or forfeitures, as prescribed in Subsection (2)(c), until the person complies.

- (5)
  - (a) The proceeds of the forfeitures under this section, including collection expenses, shall be paid into the General Fund.
  - (b) The expenses of collection shall be credited to the department's budget.
  - (c) The attorney general's budget shall be credited to the extent the department reimburses the attorney general's office for its collection expenses under this section.
- (6)
  - (a) Forfeitures and judgments under this section bear interest at the rate charged by the United States Internal Revenue Service for past due taxes on the:
    - (i) date of entry of the commissioner's order under Subsection (1); or
    - (ii) date of judgment under Subsection (2).
  - (b) Interest accrues from the later of the dates described in Subsection (6)(a) until the forfeiture and accrued interest are fully paid.
- (7) A forfeiture may not be imposed under Subsection (2)(c) if:
  - (a) at the time the forfeiture action is commenced, the person was in compliance with the commissioner's order; or
  - (b) the violation of the order occurred during the order's suspension.
- (8) The commissioner may seek an injunction as an alternative to issuing an order under Subsection 31A-2-201(4).
- (9)
  - (a) A person is guilty of a class B misdemeanor if that person:
    - (i) intentionally violates:
      - (A) an insurance statute of this state; or
      - (B) an order issued under Subsection 31A-2-201(4);
    - (ii) intentionally permits a person over whom that person has authority to violate:
      - (A) an insurance statute of this state; or
      - (B) an order issued under Subsection 31A-2-201(4); or
    - (iii) intentionally aids any person in violating:
      - (A) an insurance statute of this state; or
      - (B) an order issued under Subsection 31A-2-201(4).
  - (b) Unless a specific criminal penalty is provided elsewhere in this title, the person may be fined not more than:
    - (i) \$10,000 if a corporation; or
    - (ii) \$5,000 if a person other than a corporation.
  - (c) If the person is an individual, the person may, in addition, be imprisoned for up to one year.
  - (d) As used in this Subsection (9), "intentionally" has the same meaning as under Subsection 76-2-103(1).
- (10)
  - (a) A person who knowingly and intentionally violates Section 31A-4-102, 31A-8a-208, 31A-15-105, 31A-23a-116, or 31A-31-111 is guilty of a felony as provided in this Subsection (10).
  - (b) When the value of the property, money, or other things obtained or sought to be obtained in violation of Subsection (10)(a):
    - (i) is less than \$5,000, a person is guilty of a third degree felony; or
    - (ii) is or exceeds \$5,000, a person is guilty of a second degree felony.
- (11)
  - (a) After a hearing, the commissioner may, in whole or in part, revoke, suspend, place on probation, limit, or refuse to renew the licensee's license or certificate of authority:

- (i) when a licensee of the department, other than a domestic insurer:
  - (A) persistently or substantially violates the insurance law; or
  - (B) violates an order of the commissioner under Subsection 31A-2-201(4);
- (ii) if there are grounds for delinquency proceedings against the licensee under Section 31A-27a-207; or
- (iii) if the licensee's methods and practices in the conduct of the licensee's business endanger, or the licensee's financial resources are inadequate to safeguard, the legitimate interests of the licensee's customers and the public.
- (b) Additional license termination or probation provisions for licensees other than insurers are set forth in Sections 31A-19a-303, 31A-19a-304, 31A-23a-111, 31A-23a-112, 31A-25-208, 31A-25-209, 31A-26-213, 31A-26-214, 31A-35-501, and 31A-35-503.
- (12) The enforcement penalties and procedures set forth in this section are not exclusive, but are cumulative of other rights and remedies the commissioner has pursuant to applicable law.

Amended by Chapter 253, 2012 General Session